

**ANNUAL REPORT  
OF THE  
ENVIRONMENTAL QUALITY SERVICE  
COUNCIL**



**Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204**

**November, 2010**

# INDIANA LEGISLATIVE COUNCIL

## 2010

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# **ENVIRONMENTAL QUALITY SERVICE COUNCIL**

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### **Representatives**

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### **Senators**

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### **Staff**

Robert Bond  
Attorney for the Council

Bernadette Bartlett  
Fiscal Analyst for the Council

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

## **I. STATUTORY DIRECTIVE**

The Environmental Quality Service Council (EQSC) is established by IC 13-13-7.

## **II. INTRODUCTION AND REASONS FOR STUDY**

The activities of the EQSC were conducted to discharge the EQSC's responsibilities under IC 13-13-7-9.

## **III. SUMMARY OF WORK PROGRAM**

More detailed information concerning the work program of the EQSC can be found in meeting minutes, which can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

The EQSC met four times on the following dates and at the following locations:

August 9, 2010	House Chamber, Indiana Statehouse	IDEM Commissioner's report
September 9, 2010	House Chamber, Indiana Statehouse	Water pollution issues
September 21, 2010	House Chamber, Indiana Statehouse	E-waste, coal combustion waste, dedicated conservation funding, and administrative adjudication
October 19, 2010	Alumni Room, Administration Building, Indiana University South Bend	Ditch management, environmental crimes, impact of pipelines on the environment, and final report

## **IV. SUMMARY OF TESTIMONY**

### **First Meeting - August 9, 2010**

Indiana Department of Environmental Management (IDEM) Commissioner's Report - Tom Easterly, IDEM Commissioner, presented the annual Commissioner's Report that addressed the following: (1) mission statement; (2) response to reduced state income; (3) recent budget actions; (4) staffing levels; (5) information on accomplishments, permits, and rulemaking with respect to the Office of Air Quality, Office of Water Quality, and Office of Land Quality; (6) stimulus money expenditures; and (7) activities of the Office of Pollution Prevention and Technical Assistance.

## **Second Meeting - September 9, 2010**

Antidegradation Rulemaking - Tom Easterly presented a report on antidegradation rulemaking that addressed the following: (1) a definition of antidegradation; (2) a history of past and present antidegradation rulemaking by the state; (3) a petition by three environmental groups to the U.S. Environmental Protection Agency (EPA) for corrective action or withdrawal of the NPDES program delegation from the state; and (4) antidegradation rulemaking status in other states.

Albert Ettinger, Attorney, Environmental Law and Policy Center, made a presentation on antidegradation rulemaking that addressed the following: (1) a history of past and present antidegradation rulemaking by the state; (2) the reasons for the petition by three environmental groups to the EPA for corrective action or withdrawal of the NPDES program delegation from the state; (3) a recommendation for an amendment to state statutes to eliminate the exemption from antidegradation review of discharges under general permits; (4) an explanation of antidegradation standards that protect the assimilative capacity of water for pollutants; and (5) a recommendation for changes to the proposed state antidegradation rule.

Pharmaceuticals in Drinking Water - Lenore Tedesco, Ph.D., Director, Center for Earth and Environmental Science, Indiana University Purdue University Indianapolis, presented a report on pharmaceuticals in the environment that addressed the following: (1) the definition of a pharmaceutical; (2) the status of water pollution caused by pharmaceuticals; (3) an overview of current research efforts; (4) a review of ecological effects; and (5) a description of safe medicine disposal programs.

Tom Easterly presented a report on pharmaceuticals in drinking water that addressed the following: (1) a review of levels of pharmaceutical contamination of drinking water in Indiana and in other states; (2) the difficulty of sampling for minute concentrations of pharmaceuticals in drinking water; (3) the difficulty of determining what concentration levels of pharmaceuticals in drinking water are safe; and (4) the EPA's plan and IDEM's recommendations for protecting drinking water from contamination.

Water Contamination by Phosphorus and Other Nutrients - Dr. Tedesco presented a report on phosphorus in Indiana's lakes and streams that addressed the following: (1) the problems caused by nutrient enrichment of water bodies; (2) impacts associated with algal blooms; (3) nutrient sources, levels, and impacts in Indiana and in other states; and (4) the effectiveness of phosphorus limitations.

Tom Easterly presented a report on phosphorus that addressed the following: (1) the problems caused by excessive levels of phosphorus in surface waters; (2) the state's blue-green algae initiative; and (3) IDEM's efforts to encourage phosphorus reductions.

Angela Hamm, Water Policy Director, Hoosier Environmental Council, presented a report on the water contamination issues relating to Grand Lakes St. Marys, Ohio, that addressed the following: (1) nutrient overload resulting from land application of manure and commercial

fertilizers; (2) an Ohio action plan to improve water quality at the lake; (3) efforts to ship Ohio hog and dairy manure to Indiana potentially supported by the United States Department of Agriculture's funding through the Environmental Quality Incentive Program; and (4) recommendations for further regulation by IDEM and the Indiana State Chemist of manure storage and land application and for an increase in resources for inspection and enforcement.

The EQSC viewed the documentary film "Drop by Drop", produced by WFYI in association with the Indiana Regional Sewer District Association and the Alliance of Indiana Rural Water, which addresses water pollution issues in Indiana.

Jim Soper, Executive Director, Alliance of Indiana Rural Water, commented on the need for public education on water protection and the need for water infrastructure reconstruction.

### **Third Meeting - September 21, 2010**

E-Waste Recycling - Carey Hamilton, Executive Director, Indiana Recycling Coalition, presented a report on e-waste recycling that addressed the following: (1) collection and recycling efforts; (2) a description of stakeholders in the program; (3) a description of the growing electronic device market; (4) positive impacts of the state e-waste program, including increased employment; (5) e-waste recycling by county; (6) community collection programs; (7) recycling programs by original equipment manufacturers; and (8) issues not yet addressed.

Rep. Mary Ann Sullivan expressed her thanks to the legislators and stakeholders involved in the process of enacting the Indiana e-waste program and her satisfaction with reports that indicate that the program is off to a good start.

Coal Combustion Residues (CCR) - Richard Meiers, Principal Environmental Scientist, Duke Energy, presented a report on CCR that addressed the following: (1) the definition of CCR; (2) the history of federal regulation of CCR; (3) a description of various aspects of the currently proposed federal regulation, including applicability, enforcement issues, components of the regulation, issues concerning surface impoundments and landfills, beneficial reuses of CCR, and impacts on CCR utilization; and (4) the Indiana Energy Association's support for proposed federal CCR regulations under the Subtitle D prime Resource Conservation and Recovery Act (RCRA) non-hazardous waste program.

Jeff Stant, Environmental Integrity Project (EIP), presented a report on CCR that addressed the following: (1) a description of CCR sites throughout the country and the CCR groundwater contamination at those sites; (2) a review of Indiana CCR contamination sites; (3) a description of the toxicity of CCR and the resultant danger to people; (4) the failure of states to prevent CCR contamination; (5) the inadequacy of Indiana's CCR contamination safeguards; (6) a description of the currently proposed federal regulation; and (7) the EIP's support for proposed federal CCR regulations under the Subtitle C RCRA hazardous waste program.

Tim Maloney, Hoosier Environmental Council (HEC), expressed HEC's view that CCR need to

be better regulated and HEC's support for the proposed federal CCR regulations under the Subtitle C RCRA hazardous waste program.

#### Dedicated Conservation Funding

Jennifer Boyle, Executive Director, Indiana Association of Soil & Water Conservation Districts, made a presentation that includes a comparison of surrounding states' natural resources conservation funding mechanisms.

Lynn Dennis, Director of Government and Community Relations, Nature Conservancy, presented a report that addressed the following: (1) praise for the Iowa proposal to amend the state constitution to dedicate a portion of state sales tax revenue to sustainable funding for natural resources; (2) a history of the Iowa proposal; and (3) a recommendation for the establishment of a Sustainable Natural Resource Advisory Committee to look holistically at natural resources and conservation practices and to design a natural resources funding program that works for Indiana.

Administrative Adjudication - Kathy Lucas, Environmental Law Section, Indiana State Bar Association, presented legislative proposals to: (1) specify that an environmental law judge has the same authority and responsibilities as an administrative law judge; (2) establish additional grounds for disqualification of an administrative law judge and replacement procedures; (3) provide that the proceedings before an administrative law judge are de novo; (4) provide that settlement of an administrative matter results in the issuance of a final order that effectuates the settlement; and (5) in administrative proceedings, conform electronic service procedures and summary judgment procedures to the procedures under the Indiana Rules of Trial Procedure.

#### **Fourth Meeting - October 19, 2010**

Nitrogen Pollution and Innovations in Ditch Design Sarah Roley, Ph.D. candidate, Department of Biological Sciences, University of Notre Dame presented a report to the Council on two-stage ditches that addressed the following: (1) the effects of nitrogen pollution; (2) the characteristics of two-stage ditches that result in optimal removal of nitrogen from water; (3) the design of two-stage ditches and studies of their effectiveness; (4) physical changes that result from two-stage ditch construction; (5) the extent to which two-stage ditch design results in increases in the amounts and efficiency of nitrogen removal; (6) the extent to which two-stage ditch efficiency increases over time; and (7) the need to combine the use of two-stage ditches with other nitrogen mitigation efforts.

Joe Draper, Western Lake Erie Basin Conservation Director, The Nature Conservancy presented a report on two-stage ditches that addressed the following: (1) stresses to freshwater systems; (2) the Nature Conservancy's interest in ditches; (3) the balancing of interests of parties affected by ditches; (4) the technology associated with two-stage ditches; (5) the costs of and issues associated with two-stage ditches.

#### Environmental Crimes

Angela Hamm, Water Policy Director, Hoosier Environmental Council, reported to the Council

on environmental cases in Indiana that could have been prosecuted under the new statute but were not. She described: (1) a discharge by Materna Mint Farms of one hundred ninety degree water in Starke County that killed a dog and injured people; (2) a spill by Muncie Sow Unit of 4,500,000 gallons of hog manure into the Mississinewa River; (3) land application of over 200,000 gallons of hog manure by Chalfant Farms in Randolph County that was washed by a heavy rain into Bear Creek and caused the death of fish and vertebrates; (4) waste storage issues at V.I.M. Recycling in Elkhart County that resulted in a fire that killed a person in one incident and resulted in ground water contamination in another; and (5) dumping of oil by Nature's Fuel in Kosciusko County that pooled on the ground and required soil excavation and disposal.

The members of the EQSC discussed the new environmental crimes statute, which was supported by local prosecutors and the Attorney General. The new statute eliminated IDEM's potentially unconstitutional discretion to apply criminal penalties and clarified penalties and local prosecutorial authority. The question was raised whether IDEM should be required to refer certain matters to local prosecutors for prosecution.

Pipeline Safety Danielle Korpalski, Midwest Regional Outreach Coordinator and Beth Wallace, Oil Spill Response Coordinator, National Wildlife Federation (NWF) presented a report on the Enbridge Energy Partners pipeline oil spill in Marshall, Michigan, that addressed the following: (1) a description of the spill and the response, noting delays in identifying the location, deploying responders, and reporting to the National Response Center; (2) the deployment of a minimal work force in the days that followed the spill, which allowed the oil to travel thirty miles up the Kalamazoo River; (3) the inadequacy of response plans of the company and of numerous local, state, and federal agencies, that resulted in confusion among local residents as to the level of danger from the contamination; (4) impacts of the contamination on wildlife; (5) voluntary and mandatory home evacuations and water use advisories; (6) the current status of cleanup operations; and (6) a description of a bill introduced in Congress called the Corporate Liability and Emergency Accident Notification Act

Ms. Korpalski and Ms. Wallace recommended the following: (1) that more effective monitoring, maintenance, and reporting on existing pipelines to state and federal agencies be required; (2) that adequate emergency response plans be maintained; (3) that better communications be established between pipeline operators and responders; (4) that clear governmental responsibility be established for emergency responses including the assignment of primary responsibility to the state; (5) that minimal authority should be granted to the company that caused the emergency; and (6) that response and monitoring plans include local input and engagement.

Maggie McShane, Executive Director, Indiana Petroleum Council, addressed the Council on the following: (1) liquid pipeline use throughout the country, including the extent of product moved by pipeline as compared to other modes of transportation, usage rates, pipeline safety, input energy requirements, and carbon footprint; (2) incentives for operators to invest in safety, the trends of frequency of releases from pipelines, pipeline safety features, and the pipeline industry's Environmental and Safety Initiative; (3) pipeline safety laws and regulations; (4) pipeline operators' Integrity Management Plans; (5) excavation damage to pipelines by third parties and



One-Call Centers to be called for pipeline location information; (6) the Common Ground Alliance that promotes damage prevention practices for all underground utility industry stakeholders; and (7) recommendations for the use of One-Call Centers, adherence to pipeline location information provided, reporting of excavation damage to pipeline operators, and notification of emergency responders when excavation damage results in a release of pipeline products.

Bill Boyd, Director of the Pipeline Safety Division, Indiana Utility Regulatory Commission, presented a report on the role, responsibilities, and jurisdiction of the Pipeline Safety Division of the Indiana Utility Regulatory Commission that addressed the following: (1) the jurisdiction of the federal government over interstate pipelines and the jurisdiction of the state for intrastate pipelines; (2) the delegation of certain federal authority to the state; (3) a description of natural gas and hazardous material infrastructure in Indiana; (4) state responsibility for record keeping, compliance filings, violation letters, and inspections; (5) the state emphasis on safety as the primary goal; (6) inspections by the state and by pipeline operators; (6) the requirement for all operators to have emergency response plans and the required components of the plans; (7) pipeline damage incidents that have resulted primarily from third party damage; (8) requirements for marking of utility lines before excavation and for hand digging within two feet of marked lines; (9) investigative procedures of the Pipeline Safety Division, which forwards notice of violations to the Governor's Advisory Commission; (10) the types of incidents that are reportable; and (11) multi-agency incident response efforts.

Tim Dehring, Senior Vice President, Energy Delivery, Northern Indiana Public Service Company (NIPSCO) presented a NIPSCO pipeline safety update that addressed the following: (1) pipeline safety codes; (2) core NIPSCO pipeline safety activities; (3) recent state legislation to provide enforcement actions against excavation damage; (4) statistics on pipeline location requests and third party damage rates; (5) gas transmission pipeline integrity management; (6) NIPSCO's compliance timeline for inspection of high consequence area pipelines; (7) NIPSCO's gas transmission pipe inventory, quality of inventory, and minor, isolated quality issues; (8) NIPSCO's distribution integrity management plan; and (9) NIPSCO's emergency plans that require communication with community emergency responders.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

Although the Council lacked the quorum necessary to take official action, the members present (Rep. Ryan Dvorak, Rep. David Wolkins, Rep. Matt Pierce, Rep. Timothy Neese, Sen. Beverly Gard, Sen. Frank Mrvan, Dwayne Burke, and John Hardwick) voted unanimously in favor of the following:

- A. A recommendation for legislation to: (1) specify that an environmental law judge has the same authority and responsibilities as an administrative law judge; (2) establish additional grounds for disqualification of an administrative law judge and replacement procedures; (3) provide that the proceedings before an administrative law judge are de novo; (4) provide that settlement of an

administrative matter results in the issuance of a final order that effectuates the settlement; and (5) in administrative proceedings, conform electronic service procedures and summary judgment procedures to the procedures under the Indiana Rules of Trial Procedure.

B. A request that the Legislative Services Agency research state and federal pipeline safety laws and programs and report its findings to the Council.

## WITNESS LIST

Bill Boyd, Director of the Pipeline Safety Division, Indiana Utility Regulatory Commission  
Jennifer Boyle, Executive Director, Indiana Association of Soil & Water Conservation Districts  
Tim Dehring, Senior Vice President, Energy Delivery, Northern Indiana Public Service Company  
Lynn Dennis, Director of Government and Community Relations, Nature Conservancy  
Joe Draper, Western Lake Erie Basin Conservation Director, The Nature Conservancy  
Tom Easterly, IDEM Commissioner  
Albert Ettinger, Attorney, Environmental Law and Policy Center  
Carey Hamilton, Executive Director, Indiana Recycling Coalition  
Angela Hamm, Water Policy Director, Hoosier Environmental Council  
Danielle Korpalski, Midwest Regional Outreach Coordinator and Beth Wallace, Oil Spill  
Response Coordinator, National Wildlife Federation  
Kathy Lucas, Environmental Law Section, Indiana State Bar Association  
Tim Maloney, Hoosier Environmental Council  
Maggie McShane, Executive Director, Indiana Petroleum Council  
Richard Meiers, Principal Environmental Scientist, Duke Energy  
Sarah Roley, Ph.D. candidate, Department of Biological Sciences, University of Notre Dame  
Jim Soper, Executive Director, Alliance of Indiana Rural Water  
Jeff Stant, Environmental Integrity Project  
Rep. Mary Ann Sullivan  
Lenore Tedesco, Ph.D., Director, Center for Earth and Environmental Science, Indiana  
University Purdue University Indianapolis  
Beth Wallace, Oil Spill Response Coordinator, National Wildlife Federation